

NO. 49417-5-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE THE PERSONAL RESTRAINT

OF

PATRICK McALLISTER,

Petitioner

STATE OF WASHINGTON
BY DEPUTY

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FILED
COURT OF APPEALS
DIVISION II

PERSONAL RESTRAINT PETITION

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A. STATUS OF PETITIONER

On October 5, 2012, Petitioner Patrick McAllister was convicted of multiple felonies and misdemeanors in the Jefferson County Superior Court, including Second Degree Rape, Third Degree Rape, and Fourth Degree Assault with domestic violence enhancements following a jury trial before the Honorable Judge Craddock Verser. At the time of sentencing, Mr. McAllister, who is permanently disabled due to a shattered ankle and multiple knee and ankle surgeries, was 49 years old and these were his first felony offenses. Despite this, Mr. McAllister was sentenced to 250 months in prison and the rest of his life in community custody. *See Judgment and Sentence*, attached hereto as Appendix A. Mr. McAllister is serving his sentence at the Airway Heights Correctional Center as he challenges the constitutionality of his confinement.

B. DECISION BELOW

Mr. McAllister filed a direct appeal of the trial court decision in the Division II Court of Appeals. *See Notice of Appeal*, attached hereto as Appendix B. The Case was later transferred to Division III under Case No. 32290-4-III. The appeal alleged prosecutorial misconduct, ineffective assistance of counsel, issues that were not fully developed due to evidence

outside the record, as well as evidence discovered after the appeal. *See Brief of Appellant*, attached hereto as Appendix C.

Appellant also argued impropriety by the State in its closing arguments, including arguing facts not in evidence, attempting to appeal to the passions and prejudices of the jury, and faulting Mr. McAllister for not bringing documentation to support his disability claim. *Id.*

In an unpublished opinion, this court affirmed Mr. McAllister's conviction but suggested, as several instances of claimed error by defense counsel lay out of the record, a Personal Restraint Petition would be more appropriate for this case. *See, opinion*, attached hereto as Appendix D. The mandate, attached hereto as Appendix E, was issued on August 17, 2015. This is Mr. McAllister's first petition for discretionary review.

C. JURISDICTION

Restraint is unlawful pursuant to RAP 16.4(c) subsections (2) and (3). The conviction was obtained in violation of the federal and state constitutions. Material facts exist that have not been previously presented or heard, which in the interest of justice, require vacation of the conviction

D. GROUNDS FOR RELIEF

Mr. McAllister has the following reasons for this Court to grant him relief from the sentence described in Part A.

First Ground

Trial Counsel was grossly ineffective in this case, and utterly failed to zealously represent Mr. McAllister. Counsel conducted, at best, a negligible pre-trial investigation. Counsel failed and refused to interview defense witnesses until moments before trial. Counsel refused to obtain or utilize exculpatory documents that would have established Mr. McAllister's innocence. Counsel refused to hire medical or sexual assault expert witnesses necessary to the defense case, and failed to prepare for direct examination of the single expert that was hired. Counsel failed to prepare for interviews of State witnesses, and failed to follow up on potentially exculpatory information disclosed therein.

At trial, counsel failed to abide by Mr. McAllister's wishes in the presentation of his own testimony. Counsel entered into pre-trial agreements with the State, which enabled the State to present extremely prejudicial information without appropriate background. Finally, Counsel utterly failed to conduct an adequate cross-examination of the State's witnesses to demonstrate the multiple inconsistencies in the alleged victim's

story, and refused to call any rebuttal witnesses to establish that testimony of some State's witnesses was false.

Second Ground

The State's Attorney committed prosecutorial misconduct in this matter. The State failed to turn over multiple potentially exculpatory documents to the defense that would have established that the alleged victim in this case was fabricating her story. The State knew, or should have known, that the majority of its witnesses were testifying falsely, but still elicited their testimony. Finally, the State engaged in grossly improper conduct in its closing argument, arguing facts not in evidence in a blatant attempt to inflame the passions of the jury.

E. FACTS RELATED TO GROUNDS FOR RELIEF

I. Background

Patrick McAllister was a lonely man, and lonely men often become prey. Sober nearly 20 years, Mr. McAllister found companionship in local AA meetings, at times discussing his loneliness and desire for a life partner.

During a break in a meeting in Port Townsend in 2007, Mr. McAllister was approached by fellow member Temur Perkins, to whom he had never before spoken. Mr. Perkins surprised Mr. McAllister by inviting

him home for dessert. *Verbatim Report of Proceedings*, attached hereto as Appendix F at 513:22-23. While at the house, Mr. Perkins' wife, Rosemarie called her sister, Sherilyn Lorega, who was still living in the family's native country, the Philippines. Appendix F at 513:25. The Perkins encouraged Mr. McAllister to greet Ms. Lorega, and he did so. *Id.*

Mr. McAllister's initial disinterest in a relationship with Ms. Lorega was overcome by the Perkins' insistence that he continue calling, using a number and schedule Mr. Perkins provided. Appendix F at 513:23-514:1. Mr. McAllister soon felt like a schoolboy with a crush as he and Ms. Lorega sang, joked and talked in Mr. McAllister's only language, English. Appendix F at 515:23-516:4.

Mr. McAllister was in love and believed Ms. Lorega was in love with him also. Appendix F at 516:25-517:4. Soon the couple was discussing marriage and family. Appendix F at 520:1-4. Mr. McAllister decided to visit the Philippines, taking the "trip of a lifetime" to meet his future bride. Appendix F at 519:22-25

The visit appeared as magical as Mr. McAllister had dreamed it would be, and he was "completely happy" with a woman he loved and who would be his wife. Appendix F at 534:20-22. When Mr. McAllister returned home, he felt as though there was a hole in his heart. Appendix F at 525:1. The couple resumed daily calls and Mr. McAllister planned for

Ms. Lorega's immigration. Appendix F at 526:1-18. She lived in Manila with family of Mr. McAllister's close friends, the Omanas, while obtaining her K1 Fiancée visa. Appendix F at 528:1-23. Mr. McAllister financed Ms. Lorega's life during this period of time, including the purchase of two cell phones, her fees, living expenses, and spending money. Appendix F at 528:29-529:13. Mr. McAllister sent over \$8,000 dollars total to the Philippines. *See, Declaration of Patrick McAllister*, attached hereto as Appendix G.

In late February 2010, Ms. Lorega's visa was approved. 529:19. Walking on air, Mr. McAllister prepared for his bride's arrival, adding Filipino stations to the television, decorating her room, and buying special foods. Appendix F at 530:1-6,

On March 14, 2010, Mr. McAllister met Ms. Lorega at the airport carrying flowers and warm clothes, as, despite the \$1,200.00 he sent her to purchase a wardrobe, Ms. Lorega arrived with only the clothes on her back. Appendix F at 530:18-22, 540:23-27, Appendix G. The couple went shopping with the Omanas, and Mrs. Omana and Ms. Lorega became friends. Appendix F at 533:13-534:9.

Then, Mr. McAllister welcomed Ms. Lorega to her new home with balloons, a "Welcome Home" banner, and a blown-glass ornament

inscribed with “Patrick and Sherilyn Forever.” Appendix F at 531:7-532:13.

Mr. McAllister and Ms. Lorega began to travel, including a visit to the Seattle Center, where the couple took what Mr. McAllister described as “goofy” photos in a photo booth. Appendix F at 538:8-539:2. The photos were dated March 20th, one of the dates that Ms. Lorega alleged that Mr. McAllister raped her. *Id.*

Ms. Lorega went to see an immigration doctor for a TB test on April 2, 2010. A false positive result forced Ms. Lorega to return twice more, first for a second test on April 4, and then for the results on April 5. Appendix F at 536:8-13. At the last appointment, the doctor asked Ms. Lorega if she was being physically or sexually abused, and she laughed as she said she was not. Appendix G.

Mr. McAllister had to travel to Olympia, Tacoma, and Shelton for his own medical appointments due to his on the job injuries. (*See, Declarations of Dr. Lang and Dr. Blevins*, attached hereto as Appendixes H and I, respectively.) Ms. Lorega decided to stay home during these trips, but when Mr. McAllister returned he would take her out for dinner or the two would go on long drives. Appendix F at 540:20-23, 541:14-27, Appendix F at 559:13-560:8.

On days without appointments, the pair went to the movies, took ferry rides, and toured Brinnon. Appendix F at 542:6-21. Mr. McAllister took Mr. Lorega to church and a dinner put on by his men's bible study group. Appendix F at 542:26-543:20.

On April 15, Ms. Lorega's birthday, Mr. McAllister took her to meet his mother in Sutherlin Oregon. Appendix F at 543:21-544:11. When the couple arrived, Mr. McAllister gave Ms. Lorega a "really fancy dress" as a present. Appendix F at 544:13-19. During their stay they visited local places of interest and Mrs. Clark began to teach Ms. Lorega to cook American food. Appendix F at 545:13-22. Photographs of the visit show a happy, smiling woman who appears to be enjoying herself. Exhibits 9-13 to Appendix Z. Mr. McAllister believed his fiancé was as happy as he in their new life. Appendix G.

But April 26, 2010 everything changed. Mr. McAllister was shocked to return from a doctor visit to find police cars in the driveway. Appendix F at 551: 22-24. Frightened, Mr. McAllister hurried to the house. Appendix F at 551:25-26. At the threshold, he saw Ms. Lorega standing in the hallway. *Id.* She said only, "honey, I didn't want to do this. This wasn't my doing," before officers stepped in and denied further communication. Appendix F at 551:27-552:3. Mr. McAllister was not allowed into the house, and officers would not speak to him. Appendix F at 551:4-15.

Just minutes later, the Perkins arrived with their child in the car. Appendix F at 553:5-8. Ms. Lorega got into the car and left without further explanation. Appendix F at 553:9-10. Ms. Lorega told police she had not been assaulted. *See, Record on Appeal*, attached hereto as Appendix K at 270. Mr. McAllister described himself as brokenhearted and devastated, uncomprehending of the abrupt, almost violent end to the relationship. Appendix F at 553:13-17. Mr. McAllister would days later learn that Ms. Lorega had alleged that he had repeatedly raped and hit her, and that Mr. Perkins had called police and obtained a protective order on Mr. McAllister for Ms. Lorega.

II. The Investigation

Meanwhile, Mr. Perkins went to work gathering evidence to build a case against Mr. McAllister, with the sole goal of keeping Ms. Lorega in the country as a domestic violence victim. Appendix K at 270; *June 11, 2010 Report of Investigator Joseph Halcomb*, attached hereto as Appendix L, at page 1. Ms. Lorega immediately gave an interview to a detective with whom Mr. Perkins had worked in the past, Barbara Garrett. Appendix K at 268-70, 205. During this interview, Ms. Lorega told the detective that she had arrived in Washington State on April 6, 2010, though it would later be

determined that her arrival date was in fact March 14, 2010. Appendix K at 269.

Over the following months and years, Ms. Lorega gave ever more detailed and increasingly sinister accounts of her story, but there was never any physical evidence of the alleged abuse. Mr. McAllister hired Lance Hester and Casey Arbenz of the Hester Law Group to represent him. *Declaration of Lance Hester*, attached hereto as Appendix M. Mr. McAllister presented defense counsel with irrefutable medical evidence that he was physically incapable of perpetrating the vast majority of the crimes alleged, evidence which went unseen by the jury. The remainder of counsel's performance was similarly deficient, from failing to prepare witnesses to failing to obtain exculpatory evidence, to failing to cross-examine State's witnesses in order to demonstrate the inconsistencies and errors in their testimony.

From the start, defense counsel refused to listen to Mr. McAllister's pleas to present his theory of the case; that Ms. Lorega had set him up, using him for the sole purpose of coming to the United States, with no intention of marrying him. Substantial evidence supporting these claims, as set forth in the attached Petition, was ignored.

III. Ineffective Assistance of Counsel

1. Failure to Investigate

Defense counsel did not hire an investigator to look into either Ms. Lorega's or Mr. Perkins' backgrounds. Appendix G. Counsel did not visit Mr. McAllister's home to photograph the bathtub where Ms. Lorega claimed to have been raped, which medical evidence would have established was an impossible feat for Mr. McAllister. Appendix G. Counsel likewise did not photograph the area, which was not as secluded as Ms. Lorega claimed. Appendix G.

During her testimony at trial, Ms. Lorega described a lobby in the U.S. Embassy in Manila that does not exist. Appendix F at 605:21-606:7. In that lobby, Ms. Lorega claimed, was a "machine" that held personal possessions, including cellular phones. Appendix F at 605:24. According to Ms. Lorega,

You're going to take off everything and then they're going through a scanner and I don't know how you call a scanner. It's like, for example, this one is a machine and then this machine is like this is my stuff, and then they keep going down, go, and go. And then they have like bags where you can leave all your stuff and then you can leave before you get in the embassy.

Appendix F at 605:26-606:5.

Ms. Lorega also claimed that you can take a cell phone into the embassy, but you have to turn it off, another blatant lie. Appendix F at

606:24-25. Defense counsel did not obtain photographs of the embassy lobby prior to trial, despite the fact that defense witness Gerald Sabiniano traveled from the Philippines to the United States to testify on Mr. McAllister's behalf. Appendix F at 442-459.

This error was significant, as Mr. Sabiniano testified that he held Ms. Lorega's cell phone while she was in the embassy and took a call from a young man identifying himself as Ms. Lorega's boyfriend. Appendix F at 448:17-449:2. Ms. Lorega admitted to Mr. Sabiniano that she loved that man, not Mr. McAllister. Appendix F at 451:11-22.

The defense was in possession of, but declined to have translated, a diary kept by Ms. Lorega in which she complained about the hardships she had experienced all her life, beginning with being forced to complete all the house work at the age of 8, being abused by her mother, and being forced work in the rice fields at 10. Ms. Lorega describes a lifelong anger in her diary, particularly at men. Ms. Lorega claimed in her diary that a man had "got" her virginity and that he did not treat her well, but the identity of this man is unclear. Also of note, the diary was written in Tagalog, which Ms. Lorega claimed she did not understand well. The diary was translated for this PRP. *Declaration of Manny DeOcampo*, attached hereto as Appendix N.

Defense counsel further failed to adequately investigate the immigration implications of this case in preparation for examination of its sole expert witness, immigration attorney Elizabeth Li. Counsel elicited testimony from Ms. Li about the ease of obtaining, coming to, and staying in the United States under a fiancé visa, and also that one can also easily remain under a U visa, for crime victims who have suffered “substantial mental or physical abuse as the result of a crime,” as long as the victim aids in the prosecution and has good moral character. Appendix F at 478:9–479:13; 480:3–483:20. Counsel also elicited testimony that information regarding these visas is readily available to the public on the immigration services website, but no internet history was examined on Mr. McAllister’s computer to determine if these webpages had been accessed. Appendix F at 484:14–486:27. Counsel likewise did not question Ms. Li on quotas and waiting periods for other visas, such as the sibling visa, which currently has a wait time in excess of 12 years. *Exhibits 10 and 11* of Appendix J. Finally, Ms. Li explained that there are quotas on the number of people that are allowed in on U visas each year, and a petitioner may have to wait for the next year to be approved for permanent residence, indicating that they may be able to stay in the United States during the waiting period. Appendix F at 489:24–26. The defense did not seek to clarify whether a person awaiting permanent residence under a U visa could stay in the country during the

waiting period. *Id.* This would have established that Ms. Lorega knew that this scenario was likely her only way to stay in the United States.

2. Failure to interview witnesses or ensure presence at trial

Mr. McAllister provided contact information for several friends who ultimately testified at trial regarding interactions witnessed between Mr. McAllister and Ms. Lorega, but none were interviewed prior to trial.

The Friday before trial, Mr. McAllister's counsel handed him subpoenas to give to all of his witnesses, despite the fact that several lived in Oregon, forcing Mr. McAllister, who was at that time unable to leave the State, to mail the subpoenas. The subpoenas thus did not reach witnesses in a timely manner, and several defense witnesses were unable to appear. *Declaration of Kari Ann Clark*, attached hereto as Appendix O; *Declaration of Wilma Mican*, attached hereto as Appendix P.

Defense witnesses later revealed they had never been interviewed by the defense prior to the trial, aside from a ten-minute group meeting in the courthouse lobby with some witnesses just prior to trial. Appendix G at paragraph 19; *Declaration of Kelly Darby*, at paragraph 3, attached hereto as Appendix Q; *Declaration of Arthur Mina* at paragraph 4, attached hereto as Appendix R; *Declaration of Kay Peterson* at paragraph 4, attached hereto as Appendix S; *Declaration of Doug Peterson* at paragraph 4, attached

hereto as Appendix T. All of the foregoing witnesses knew Mr. McAllister well, and all could likewise have testified that he had walked with a limp for years. *Id.* Witnesses were not asked to bring any documentation to the court with them, or given any indication of proposed testimony. *Id.* Witness John McKay, who likewise could have testified to all of the foregoing information, was not even called at trial. *Declaration of John McKay*, attached hereto as Appendix ff.

Counsel's failure to interview witnesses was also reflected in the weak testimony given by all of the defense witnesses. The defense first called Doug Peterson and his wife, Kaye, who were so ill-prepared by counsel that they could not even remember Ms. Lorega's name. Appendix F at 402:7-9; 396:17-27. Alvin Wood, Mr. McAllister's minister, could not remember when he had met Ms. Lorega. Appendix F at 503:19-27. Mr. McAllister's friend Kelly Darby had seen the couple twice, but could not remember the dates. Appendix F at 409:9-15, 410:25-411:4. Witnesses would have been able to testify to more detailed and proven encounters had pre-trial interviews been held.

Maryanne Omana testified about her father's role in assisting Ms. Lorega to immigrate, leading to Mrs. Omana and Ms. Lorega meeting and developing a friendship. Appendix F at 426:18-428:19. Only in cross-examination was it learned that the two ladies often spoke on the phone, but

Mrs. Omana could not remember the numbers she had called, nor did she have phone records available, again due to poor pre-trial preparation by defense counsel. Appendix F at 435:20-436:4.

Dennis Omana's testimony was likewise not as exculpatory as it might have been, as the defense failed to ask for records to substantiate dates of trips taken by the two couples, including receipts that would have shown that Mr. Omana picked up the tab for dinner for the group on March 20, 2010. Appendix G at paragraph 14. The State took advantage of this lack of preparation in closing, noting that the defense witnesses "couldn't get their stories straight." Appendix F at 661:113

Further, counsel was clearly unprepared for the interviews of State witnesses that he did conduct. In the defense interview of Ms. Lorega on November 11, 2010, Ms. Lorega talked about her boyfriend, Andrew, whom she has been dating since March 2011, and admitted she sometimes stays the night at his house. *Excerpt from November 4, 2011 Defense Interview of Sherilyn Lorega* at 75:20-76:23, attached hereto as Appendix U. Defense counsel did not question Ms. Lorega about Andrew, elicit his last name, or attempt to interview or call Andrew as a trial witness. *Id.*

3. Failure to lay a foundation for witness tampering evidence

Gerardo Sabiniano, who assisted Ms. Lorega with the visa process, testified that he saw that Ms. Lorega had two cellular phones, both of which he had held for her while she completed paperwork inside the embassy. Appendix F at 448:17-24; *Declaration of Gerardo Sabiniano* at paragraph 6, attached hereto as Appendix V. It was then that Mr. Sabiniano spoke to Ms. Lorega's boyfriend, the man she later admitted she loved. Appendix F at 448:24-449:2, 451:11-22; Appendix V at paragraph 7.

Defense counsel attempted to bring in evidence that Mr. Sabiniano had been threatened by a man he recognized as Ms. Lorega's uncle once his witness visa reached the Philippines, but was cut off by relevance objections. Appendix F at 452:24-453:5. Defense counsel made no argument nor any offer of proof to establish the relevancy of this testimony.

It was later learned that defense counsel was in possession of a police report documenting Mr. Sabiniano's proposed testimony. Appendix G at paragraph 27. However, counsel failed to even attempt to bring this police report into evidence or to provide any meaningful offer of proof to overcome the State's relevance objection, and thus the State's objection was upheld. *Id.* : Appendix F at 452:24-453:5.

4. Failure to utilize known exculpatory evidence

Ms. Lorega claimed throughout the investigation and trial that Mr. McAllister would walk by her and kick her in the buttocks or the back while she was standing. *See, e.g.*, Appendix F at 354:7-355:18. It is clear from a review of Mr. McAllister's medical records, however, that Mr. McAllister was physically incapable of moving in the way described and demonstrated by Ms. Lorega. *Declaration of Dr. Jeffrey Nacht* at paragraphs 9 and 10, attached hereto as Appendix W.

Years before meeting Ms. Lorega, Mr. McAllister had shattered an ankle while building boats for the Coast Guard, an accident that required surgery and the removal of 22 loose pieces of bone. *Exhibit 1 to Appendix W* at p. 5. In 2006, while working as a welder, Mr. McAllister suffered a severe sprain to his right ankle. *Id.* The ankle initially appeared to heal, but then began to swell. *Id.* An MRI revealed degeneration, requiring surgery that left him permanently impaired. *Id.* Almost a year after Ms. Lorega left him Mr. McAllister had knee replacement surgery, preparations for which had been ongoing before Ms. Lorega came to America, during which time Mr. McAllister was seen by surgeon Jeffery Nacht. *Id.* at 5-6; *Exhibit 2 to Appendix W*.

Mr. McAllister was also being seen by Dr. G. R. Lang for chronic intractable back pain due to a bulging lumbo-sacral disc. *Exhibit 1 to Appendix W*, at 5.

By the time Ms. Lorega arrived in America, Mr. McAllister was suffering constant pain in both legs and his back. Appendix G at paragraph 15. He was unable to bear weight on his right ankle, causing swelling in his right knee and forcing him to limp, which caused pain in his left ankle as well. Appendix G at paragraph 16. Mr. McAllister was unable to crouch more than 20 degrees, and was unable to flex his ankles more than 30 degrees' plantarflexion and 0 degrees' dorsiflexion. *Exhibit 1 to Appendix W*, at 7. Mr. McAllister was unable to work, and he had been declared disabled by the Department of Labor and Industries. *Declaration of Richard Thorson*, attached hereto as Appendix X.

Mr. McAllister testified at trial about his shattered ankle and other limitations, and said he did not believe he could move his leg as Ms. Lorega claimed, but the medical records proving this claim were never entered into evidence. Appendix F at 512:10-513:5, 550:22-551:10, Appendix G at paragraphs 15-17. The State highlighted the lack of medical records in closing, hinting that Mr. McAllister was lying about his disabilities. Appendix F at 689:23-690:6.

In rebuttal for the State, Mr. Perkins testified that Mr. McAllister did not always walk with a limp, intimated that he was trying to “scam” the Department of Labor and Industries into finding him disabled, and denied being aware that Mr. McAllister had undergone any surgeries. Appendix F at 580:22-582:23, 583:15-584:10. Once again, medical records were not used to rebut Mr. Perkins’ claims. Appendix G at paragraphs 15-17.

Additionally, Mr. McAllister tested negative for any sexually transmitted diseases, including the ones later found to be carried by Ms. Lorega. Appendix G at paragraph 10. The test results were not used. *Id.*

Ms. Lorega told Detective Garrett that she believed Mr. McAllister had sent her about \$3700.00 to cover her expenses and immigration fees, and that sometimes the money was not enough. Appendix K at 269; Appendix L at page 3. However, between August 2008 and March 2010, Mr. McAllister wired sums between \$100.00 to \$400.00 to Ms. Lorega either weekly or every other week. Appendix G at paragraph 7. The wire transfer receipts show Mr. McAllister sent a total of \$8,000.00 but were not entered into evidence at trial. *Exhibit 1 to Appendix G.*

Contrary to Ms. Lorega’s claims of isolation, phone records were offered to defense counsel that showed numerous calls by Ms. Lorega to her sister or to family friend Maryanne Omana on days that Mr. McAllister was

away. Appendix G at paragraph 13. Counsel refused to use the records, claiming they would confuse the jury. *Id.*

The phone records would also have shown the complete fabrication of Ms. Lorega's claims to the defense that she called 911 in April 2010, and that it was a "miracle" that she knew the right words to say because her English was not good. Appendix U at 65:10-66:13.

5. Failure to hire a sexual assault expert or a medical expert

Prior to trial, Mr. Hester and Mr. Rosekrans agreed in limine to exclude mention of the STDs contracted by Ms. Lorega and mentioned in her medical reports. Appendix F at 6:9-14. The untreated STD from which Ms. Lorega was suffering explained her pelvic pain and bleeding, symptoms that could otherwise be attributable to sexual abuse.¹ Appendix K at 83.

The defense then attempted to exclude the testimony of both nurses Wendy White and Jolene Culbertson, arguing that statements in the medical reports constituted hearsay, and were merely repetitive accounts of Ms. Lorega's story. Appendix F at 35:13-22. Further, the reports did not show sexual abuse, but only diagnosed STDs. *Id.* The State disagreed, claiming that, contrary to what was in the medical reports, both nurses would testify

¹ Again, Mr. McAllister had tested negative for all STDs

that they saw signs of sexual abuse when examining Ms. Lorega. Appendix F at 36:3-7, 36:23-37:9. The Court allowed the testimony, and defense counsel raised no objections. Appendix F at 369:14-27; Appendix F at 370:20 – 373:27; This was extremely prejudicial for the defense, as the State called Nurse White as its “sexual assault expert,” despite the fact that her CV, apparently not reviewed by the defense, shows that she is merely an ARNP. Appendix F at 37:12-38:15, Appendix J at paragraph 12, Exhibit 8. Nurse White testified, contrary to her written notes, the vaginal bruising observed was a result of sexual abuse. Appendix K at 83. A sexual assault expert would have been able to impeach Nurse White. *See, Declaration of Dr. Phillip D. Welch*, at paragraphs 15-17, attached hereto as Appendix Y.

Specifically, a sexual assault expert would have informed the jury that the bruising of which Nurse White spoke could be consistent with *either* sexual abuse or consensual sex. Appendix Y at paragraph 14. Bruising disappears within two weeks, thus any bruising that was inflicted on Ms. Lorega on or around April 25, 2010 would have been long gone by the time of her examination in June of that year. *Id.* at paragraph 16. It is physically impossible for a bruise inflicted in April to have been visible two months later. *Id.* Further, had the defense not stipulated to the exclusion of all STD evidence, an expert called in rebuttal could have provided the information that the incubation period for vaginal warts due to HPV can be anywhere

from one to twenty months, raising the possibility that Ms. Lorega contracted the disease before leaving the Philippines or after leaving Mr. McAllister's house in April 2010. *Id.* at paragraphs 18-21. Further, as Mr. McAllister had never had genital warts or HPV, it was highly unlikely that Ms. Lorega had contracted the disease from him. *Id.* at paragraph 21. Due to the defense stipulation in his motions in limine, this information could not be conveyed to the jury.

Defense counsel likewise failed to meet with Mr. McAllister's doctors and neglected bring a medical expert in to testify regarding Mr. McAllister's medical condition and physical limitations, as outlined *supra*. Appendix W at paragraph 7.

6. Failure to Cross Examine or impeach State witnesses

Sherilyn Lorega denied being physically or sexually abused during an appointment with an immigration doctor on April 5, 2010. Appendix G at paragraph 8. Yet, just three weeks later, on April 26, 2010, Ms. Lorega left Mr. McAllister, and days later claimed she had been raped and beaten repeatedly while in his home. Appendix K at 268-269. Ms. Lorega made several changing claims over the course of the investigation in this case, and was cross examined about only three at trial. Appendix F at 355:21 – 361:8.

Ms. Lorega initially told Detective Garrett on April 28, 2010 that she did not enjoy sex five times with Mr. McAllister, and insisted that she said no to sex every time Mr. McAllister demanded it. Appendix K at 269. In the same interview Ms. Lorega changed her story, claiming Mr. McAllister forced sex on her several times in one day. *Id.* Ms. Lorega also claimed that Mr. McAllister left her alone for long periods and that he did not take her anywhere or introduce her to any friends except for one “drunk old man” named Kenny. Appendix K at 270. This, too, would later prove to be false, as Ms. Lorega was forced to admit to their outings. Appendix F at 331:22-25; 332:19-22; 350:19–352:7. None of these inconsistencies were brought out in defense cross-examination.

According to Ms. Lorega, Mr. McAllister forced both oral and vaginal intercourse and would hit and kick her, either in the buttocks or on her back, often for no apparent reason. Appendix F at 311:9-22; 316:7-16; 319:22-26. While she claimed she had been kicked hard enough to cause bruising, she was not bruised when she was interviewed, just two days after leaving Mr. McAllister’s house. Appendix K at 269. When he wasn’t kicking her, Ms. Lorega claimed Mr. McAllister yelled and threatened to delay their wedding until her K-1 visa expired. *Id.* Ms. Lorega alleged Mr. McAllister was verbally abusive and overly critical of everything she did, including smiling at strangers in public, contradicting her claim that he

never took her out. Appendix K at 268. Ms. Lorega's lack of bruising from the abuse she claimed to have suffered was never brought up in cross-examination.

Likewise, Ms. Lorega was not questioned regarding her nearly immediate contact with an immigration attorney in May 2010 to secure a domestic violence survivor visa to allow her to remain in the country. Appendix L at page 5.

On May 10, 2010, Ms. Lorega and Mr. McAllister appeared together in court for a hearing on a permanent order of protection against Mr. McAllister. Appendix K at 115. At that hearing, Ms. Lorega testified that Mr. McAllister had threatened her repeatedly, including once on the way to his father's house, contrary to her first statement that she had never met his family. Appendix K at 110. Ms. Lorega also testified under oath that she called 911 on April 26 to report the abuse, and provided great detail as to what she had told the police in asking them to come to her house. Appendix K at 106. Ms. Lorega testified that the first time she had been compelled to have sex with Mr. McAllister was on March 17, 2010, as opposed to the March 18 date given in other interviews. Appendix K at 108. Finally, Ms. Lorega claimed she did not remember the first time Mr. McAllister kicked her, contrary to the details provided in her calendar later. Appendix K at 107.

When confronted with photographs of her time with Mr. McAllister in which she appeared happy, including one showing her smiling and kicking her leg high, Ms. Lorega admitted that she was happy in some of them, but claimed that in others she was simply putting on a good face for Mr. McAllister's relatives because she feared Mr. McAllister's wrath. Appendix K at 105, Exhibits 9-13 to Appendix Z. Though many of these statements, made under oath, were inconsistent with other recorded statements and trial testimony, none of them was ever brought out during cross-examination.

Mr. Perkins was heavily involved with the entire investigation, as is reflected by the interview notes of the State's investigator, who references him repeatedly. Appendix L. During the entire investigation, Mr. Perkins stayed in close contact with Detective Garret, facilitating medical releases from Ms. Lorega and sending the detective information regarding Ms. Lorega's visa application that he claimed would demonstrate Ms. Lorega was a virgin when she came to the United States. Appendix K at 170. The paperwork proved no such claim, however. Appendix K at 385-387. This, too, was not questioned by defense counsel.

Mr. Perkins also sent the detective numerous letters he claimed to have translated from Ms. Lorega's dictation. One, a three-page missive sent on May 11, 2010, sounds nothing like later testimony given by Ms.

Lorega, suggesting that the words were not hers. Appendix K at 138-140. The statement makes reference, for example, to Mr. McAllister's alleged erectile dysfunction medication – a medicine that Ms. Lorega only ever referred to as his pills to make his penis strong.² *Id.* Ms. Lorega also claimed in this statement she consented to sex with Mr. McAllister on March 18, 2010, a claim she later retracted. Appendix K at 140.

Also, in this statement Ms. Lorega alleged that she had been raped multiple times, but that the last rape was on April 9, 2010. Appendix K at 140. However, Ms. Lorega would maintain after this, up until and including her trial testimony, that she was raped for the last time on April 25, 2010. Appendix F at 333:22-27. Neither Ms. Lorega nor Mr. Perkins were questioned regarding these emails or their origin.

On June 7, 2010, Ms. Lorega was interviewed again, this time with a formal interpreter in lieu of her sister. Appendix K at 156-169. At this interview Ms. Lorega admitted that Mr. McAllister had taken her to several stores to purchase clothes for her, and had taken her on trips to meet his mother, father and sister. Appendix K at 166-167. During this interview Ms. Lorega also claimed that the first time she and Mr. McAllister had sex she told him to stop and he did. Appendix K at 164. Also during this interview,

² Mr. McAllister never possessed this prescription. Appendix G at paragraph 22

Ms. Lorega admitted that she had had a boyfriend in the Philippines, though defense counsel never followed up on this information. Appendix K at 158.

On June 10, 2010, the prosecutor and his private investigator interviewed Ms. Lorega, this time with Mrs. Perkins again acting as the “interpreter” at the urging of Mr. Perkins. Appendix L. This time, Ms. Lorega claimed that she and Mr. McAllister had been introduced by a friend of Mr. Perkins over the phone; he had called with increasing frequency, culminating in a visit in May 2008, after which marriage discussions began. *Id.* at page 2.

Ms. Lorega moved to Manila to facilitate the completion of paperwork. Appendix L at page 3. Ms. Lorega told the investigator that she initially stayed with family, but later moved in with friends of Mr. McAllister. *Id.* She would later claim she lived with her grandmother the entire time she was in Manila. Appendix K at 43-44.

After arriving in the United States, Ms. Lorega told the investigator, Mr. McAllister did not ask for sex for four days. Appendix L at page 3. At this interview, Ms. Lorega claimed she had not in fact resisted the first time Mr. McAllister wanted sex but decided that sex was painful, and refused to engage in sexual relations thereafter with Mr. McAllister. *Id.* However, Ms. Lorega claimed Mr. McAllister forced her repeatedly. *Id.* at 3-4. Ms. Lorega claimed she had not left earlier due to fear. *Id.* at 4. She also said

that she would rather not return to the Philippines. *Id.* at 5. Mrs. Perkins later stated in a declaration for Ms. Lorega's U-Visa that Ms. Lorega told her that she would "rather die" than return to the Philippines. *See, Declaration of Rosemarie Perkins*, attached hereto as Appendix aa.

Ms. Lorega's calendar debuted at this meeting. Appendix L at page 3-4. The State's investigator and the prosecutor went over the calendar in great detail with Ms. Lorega and sent her home with it, telling her to clarify portions. *Id.* at page 4.

It does not appear that the detective or the prosecutor ever urged Ms. Lorega to obtain a physical examination at any time after she made her initial complaints, despite conducting several interviews. It was not until approximately six weeks after Ms. Lorega's initial report, on June 16, 2010, that Ms. Lorega finally had a physical examination to document the alleged abuse. Appendix K at 275-276. She seen by Nurse Jolene Culbertson at Harrison Hospital, who claimed Ms. Lorega presented with blood-filled lesions on her hymen, blisters on the posterior fourchette, and shiny blisters in the perineal area. *Id.* The nurse suspected sexually transmitted diseases and recommended treatment. *Id.* There is no documentation of any bruising or other injuries consistent with abuse. *Id.* This, too, escaped any defense questioning when counsel decided to entirely forego any cross-examination of Nurse Culbertson.

On June 18, 2010, Ms. Lorega submitted to an examination by nurse Wendy White at the Jefferson County Public Health Clinic. Appendix K at 83. Nurse White noted that Ms. Lorega had been seen by a doctor at Harrison Hospital, but had not been satisfied with her visit. *Id.* This statement was not elaborated upon, nor was any discovery sought from that visit. Upon examining Ms. Lorega, Nurse White claimed to observe vaginal warts, and noted that some of the warts were abnormal in color as if bruising had occurred. Appendix K at 83. Nurse White notes Ms. Lorega claimed sexual abuse, but she did not make any written findings that such abuse had occurred. *Id.*

Nurse White diagnosed the warts as a form of HPV. Appendix K at 83. Despite Ms. Lorega's claims of forced oral sex, no throat cultures were taken to determine the presence of STDs in the throat. *Id.* Bloodwork also showed that Ms. Lorega had chlamydia, which had spread to her uterus, causing Pelvic Inflammatory Disease (PID), and explaining the pain, cramping, and bleeding. *Id.* Ms. Lorega did not make any claims at this appointment that Mr. McAllister had been kicking her, nor did Nurse White document any signs of sexual abuse, such as vaginal or anal tears or other bruising. *Id.* Nurse White was not cross-examined regarding these inconsistencies.

It was also in filling out paperwork for her June 18, 2010 appointment that Ms. Lorega failed to answer one, and only one question on the interview form, the question asking whether she had had sex with a new partner in the last 60 days. Appendix K at 77. Ms. Lorega was not questioned on this omission during trial.

On November 4, 2010, Ms. Lorega was again interviewed by Deputy Garrett. Appendix K at 73. The deputy pointed out that Ms. Lorega's story changed each time she was interviewed. *Id.* Ms. Lorega replied that she now wanted to tell her whole story, in order to defend herself and "win" the case against Mr. McAllister. Appendix K at 72

Ms. Lorega was questioned as to the fact that she and Mr. McAllister had been able to communicate in English during their telephone calls, but now needed an interpreter. Appendix K at 66-67. Ms. Lorega responded, "Um, during the time - I know I understand him, know how to speak English, during the time when this has not happened yet, but after this happened everything has washed out." Appendix K at 66.

During this interview, Ms. Lorega also claimed for the first time that Mr. McAllister had forced her to perform oral sex during his visit to the Philippines, claiming he held onto her head, making her feel she was being forced. Appendix K at 55-57. Mr. McAllister had allegedly wanted intercourse, but she had had the strength to push him away. Appendix K at

55. Other times both before and after this interview, Ms. Lorega would claim that due to Mr. McAllister's size she was unable to resist his advances. Appendix K at 163; Appendix U at 75:20-76:23.

In November 4, 2010 interview Ms. Lorega also claimed that she lived with her grandmother in Manila and worked as a maid, but that she quit that job when Mr. McAllister asked her to do so. Appendix K at 42-43. This claim never again was made, and was not questioned at trial.

After arriving at Mr. McAllister's house, Ms. Lorega claimed he had initially reassured her that they would not have pre-marital sex, but just four days later Mr. McAllister had forced himself on her and she had been unable to stop him due to his size. Appendix K at 34. Though Ms. Lorega claimed she felt "blank" after this, and like "everything was wiped out," she was nonetheless able to remember being raped in the bathtub – an impossible feat given Mr. McAllister's physical limitations – and being forced to perform oral sex. Appendix K at 30-31, 33. Ms. Lorega claimed she was completely new to any sexual activity and she had never had any boyfriends in the Philippines. Appendix K at 17. However, earlier she admitted that she had a boyfriend before leaving the country. Appendix K at 158.

When asked how many times Mr. McAllister had allegedly forced sex on her, Ms. Lorega claimed not to be able to remember. Appendix K at 23. Yet she later produced a calendar showing the exact dates of the alleged

rapes and what had happened on each day, claiming that with Mr. Perkins' and Mr. Rosekrans' help she had been able to reconstruct that time period. Ms. Lorega initially flatly denied having anal sex with Mr. McAllister. Appendix K at 22. However, just a few questions from Detective Garrett asking if she was sure about this elicited a claim from Ms. Lorega that Mr. McAllister had put his finger in her anus. *Id.* Additional questioning led Ms. Lorega to change her story again, now claiming Mr. McAllister had asked for anal sex but she had declined. Appendix K at 22-23. Yet more questioning lead Ms. Lorega to allege that Mr. McAllister had attempted have anal sex but she had "escaped," something she apparently was not able to do on other occasions. Appendix K at 23. The changing nature of Ms. Lorega's story during just six questions in one interview was not utilized at trial to establish how quickly Ms. Lorega invented details when she perceived it would be useful to her.

Also in the November interview, Ms. Lorega claimed she could provide more details because she had a Waray-Waray interpreter, whereas in the past she had had a Tagalog interpreter. Appendix K at 18. Yet, arguably, the interviews in which her sister interpreted for her would also have been in Waray-Waray. Additionally, her journal was written in Tagalog and English, not Waray-Waray. Appendix N at paragraph 11. Ms. Lorega would later testify in re-cross at trial that she was fluent in Tagalog.

Appendix F at 367:7-13. Yet, after eliciting this information, the defense asked no further questions and did not bring up the matter again in argument.

On May 24, 2011, Ms. Lorega's calendar was given to the State in what was presumably its final form. Appendix K at 260. However, Ms. Lorega also admitted writing the detailed calendar long after the fact, at the request of the prosecutor, either the summer or even the winter after she left Mr. McAllister. Appendix U at 41:5-42:14. These facts were not brought out by defense counsel at trial.

In the same defense interview, Ms. Lorega claimed that she had never wanted to come to the United States until she met Mr. McAllister, and did not know if she would stay after the case was completed, despite statements earlier to the contrary. Appendix U at 18:19-19:3. Ms. Lorega also admitted that she watched a video on human trafficking and domestic violence as part of her immigration preparation. *Id.* at 23:13-24:13. Again, these facts were left out at trial.

Also during this interview, Ms. Lorega now claimed that she didn't object when Mr. McAllister began to kiss her as a prelude to sex on March 18, 2010. Appendix U at 32:18:24. Ms. Lorega had claimed at other times that Mr. McAllister never engaged in foreplay. Now Ms. Lorega alleged she didn't stop Mr. McAllister because she didn't know how, but then

claimed she said stop to no avail, and still considered the March 18 episode to be forced. *Id.* at 33:1-11; 35:9-17. These facts were not used at trial.

Ms. Lorega now finally admitted that Mr. McAllister took her on drives, took her to the movies and out to dinner, and on excursions to Seattle and to other places, contrary to earlier intimations that he kept her locked in the house. Appendix U at 53:18-56:20; 60:23-61:24. She also admitted that Mr. McAllister limps, which could have been used to rebut Mr. Perkins' denial Mr. McAllister was disabled, but was not. *Id.* at 61:25-62:1.

Finally, Ms. Lorega spoke at length about calling 911 on the day she left Mr. McAllister's house, providing one of the most detailed answers in the entire interview:

I told-- tell to the policemen-- he asked me like, "What's wrong? Tell me so I know what's wrong with you." I'm like, "I want to leave with my boyfriend because he's so mean. He's not nice. He's abusing me." That's what I told to the policemen.

Q Okay. And where did you learn those words?

A For myself. I don't know. Just like miracle that I say that word, because I know how to speak English, but I just -- I don't know. I have some trouble speaking English. I don't know. It's a miracle at the time.

Id. at 66:3-13. This statement was not impeached at trial using the CAD reports that were in counsel's possession. *See, Response to Public Record Request of Casey Arbenz*, March 23, 2012, and accompanying CAD report, attached hereto as Appendix bb.

On the day of trial, the first witness, Rosemarie Perkins, who was unable to recall anything during the defense interview, testified in exquisite detail, her memory inexplicably revived. Mrs. Perkins claimed Mr. McAllister was “sort of like family kind of” so she had introduced him to Ms. Lorega. Appendix F at 203:8-16. Mrs. Perkins testified in cross examination that Mr. McAllister and Ms. Lorega spoke in English on the phone, yet counsel did not delve into any detail regarding this admission, nor did he bring up this subject in cross-examination of Ms. Lorega. Appendix F at 228:20-23.

Mrs. Perkins claimed that Ms. Lorega called her crying on April 26, 2010, and did not answer the phone when Mrs. Perkins tried to call her back. Appendix F at 207:8-15; 208:25-209:2. Mrs. Perkins claimed she immediately went to her sister’s home, where she found two policemen standing by as Ms. Lorega packed, and that Mr. McAllister arrived shortly thereafter. Appendix F at 210:1-3, 21-24; 211:18-20. Two other state’s witnesses, Deputy Newman and Mr. Perkins, testified that Mr. Perkins called 911, and that the Perkins family did not arrive on the scene until after Mr. McAllister arrived home. Appendix F at 270:8-10; 273:9-14; 241:17-19, 242:7-10.

Mrs. Perkins claimed that Ms. Lorega stayed with her initially, shut up in her room crying and refusing to eat, though she did tell her sister what

had happened to her. Appendix F at 213:23-214:6. Ms. Lorega allegedly told her sister she could not go back to her home town. Appendix F at 215:23-216:3. But it was not until later, when she complained of pain, that anyone thought to take Ms. Lorega to a health clinic for an examination, despite her allegations of rape. Appendix F 217:10-17. Defense counsel failed to question Mrs. Perkins or, later, her husband, as to why medical care had not been sought for Ms. Lorega immediately when she came to them distraught, refusing to eat, and threatening to harm herself.

On cross-examination, Mrs. Perkins admitted to giving Ms. Lorega a ride to the immigration attorney's office, but could not remember if she and her husband had paid the attorney, and claimed that she had not known at the time why Ms. Lorega even wanted to stay in the country. Appendix F at 224:5-225:10. Defense counsel questioned Mrs. Perkins regarding a single inconsistency in her testimony, but backed down when Mrs. Perkins denied it, having no impeachment material ready. Appendix F at 219:6-13. No further cross-examination was undertaken.

The next witness, Temur Perkins, was not questioned regarding his close working relationship with the prosecutor or the fact that he and the detective knew each other prior to the commencement of this case. Mr. Perkins failed to mention that Ms. Lorega appeared to be in pain. This was not challenged by the defense.

Mr. Perkins claimed that he called 911 on the day that Ms. Lorega left Mr. McAllister's home, but on cross-examination claimed that Ms. Lorega had also called. Appendix F at 241:16-19, 253:1-4. The defense apparently failed review the CAD reports obtained in March 2012, as these were not used for impeachment at any time. Appendix bb. When Mr. Perkins arrived at the McAllister home, he claimed that he had stayed in the car except to help Ms. Lorega bring out a bag of clothing. Appendix F at 253:11-19. However, in his deposition, Mr. Perkins claimed he had spoken to police on that day. *Excerpt from October 28, 2011 Defense Interview of Temur Perkins* at 38:2-8, attached hereto as Appendix cc. This too was unchallenged on cross-examination.

Mr. Perkins also claimed he had not helped Mr. McAllister with immigration paperwork, contrary to Mr. McAllister's report that he was able to navigate the immigration process only with Mr. Perkins' help. Finally, Mr. Perkins claimed that Ms. Lorega had asked him to buy her a ticket back to the Philippines and he had indicated he could do that, but encouraged her to stay. Appendix F at 244:4-10. Though this statement met with a preliminary challenge on cross-examination, the subject was dropped when Mr. Perkins alleged that he had made this statement in a recorded interview. The defense challenged Mr. Perkins to name the interview, but had no impeachment material ready. The fact that Mr.

Perkins had guided Ms. Lorega through the writing of statements and the creation of her “journal” was not discussed.

The officers involved in the case also testified. Neither of the officers who responded to the 911 call were cross-examined regarding the fact that Ms. Lorega told them she had not been assaulted. Appendix K at 222. Sergeant Stringer described Ms. Lorega’s English as “broken,” a claim that was not included in his report. Appendix F at 265:26-27. This too was not brought forth on cross-examination.

Detective Garrett, the primary investigator, was allowed to explain away all of Ms. Lorega’s inconsistencies in her stories as problems brought on by cultural mores or language barriers. Appendix F at 277:24-282:27. Yet, she was not cross-examined regarding the fact that Ms. Lorega and Mrs. Perkins speak the same dialect, or that Ms. Lorega admitted she is fluent in Tagalog, both of which would negate any language issues in at least three interviews.

Ms. Lorega testified, and was questioned about her English comprehension, and claimed she spoke the language well. Appendix F at 294:18-25. In so doing, she testified that she had worked as a maid for an English speaking couple when she was 15. Appendix F at 294:26-295:7. This explains how Ms. Lorega and Mr. McAllister were able to communicate while they were dating, but not Ms. Lorega’s sudden inability

to speak anything but Waray-Waray once she began to allege she had been abused, a subject left untouched by the defense.

Contrary to her earlier statements, Ms. Lorega described a lovely visit from Mr. McAllister while she still lived in the Philippines, and claimed that she started falling in love with him at that time. Appendix F at 305:6-306:11. The defense failed on cross-examination to inquire about the November 4, 2010 interview in which she told Detective Garrett that it was during this visit that she began having doubts about Mr. McAllister and his potential as marriage material during that time. Appendix K at 54.

Ms. Lorega testified that on March 18, 2010, contrary to her claims over the last two years, Mr. McAllister simply forced sex on her. Appendix F at 313:15-314:18. This statement was not questioned on cross-examination.

Ms. Lorega alleged that Mr. McAllister also forced her to perform oral sex. Contrary to her previous interviews, where she had admitted to performing oral sex on Mr. McAllister when he visited in the Philippines, she claimed this was her first such experience and that Mr. McAllister had not explained it at all to her. Appendix F at 316:7-12. This, too, was left untouched in cross-examination. From this point on, the sex was nearly daily, Ms. Lorega alleged, but she was unable to get away due to Mr. McAllister's size, and he forced her even when she crossed her legs and

arms. Appendix F at 317:926. This last bit was another new detail Ms. Lorega added to her story that was likewise not questioned on cross-examination.

Ms. Lorega claimed that she had a brief respite when Mr. McAllister traveled to Silverdale daily for appointments from March 26 to April 1. Appendix F at 323:3-13. Ms. Lorega, in yet another new embellishment to her story, claimed she spent these five days sitting in the garage and crying. Appendix F at 323:14-17. There was no cross-examination regarding this time period, nor were phone records subpoenaed to establish what might have occurred in Mr. McAllister's absence.

Upon Mr. McAllister's return, Ms. Lorega alleged that the rapes continued, including and alleged rape in the bathtub on the 8th, a maneuver that Mr. McAllister's doctor, had he been called to testify, would have demonstrated was impossible. Appendix F at 328:4-24; Appendix U at paragraph 9. Ms. Lorega now claimed that the final rape occurred on April 25, 2010. Appendix F at 333:22-23. She had maintained in the past that the final rape was on April 9, 2010. Appendix K at 140.

To explain the discrepancies in her stories, Ms. Lorega alleged that she was embarrassed and scared, and was able to tell Detective Garrett only a bit of the story each time. Appendix F at 296:7-27. This, however, did not explain new bits of the story coming out now, at trial, without any

interpreter present, and regarding which Ms. Lorega was never questioned by the defense. Ms. Lorega then claimed the only reason she ever went to the doctor was because she was having vaginal bleeding, not because she was in pain. Appendix F at 340:21-341:4.

On cross-examination, defense counsel asked Ms. Lorega about just three discrepancies in her stories. The first, when she claimed at one point to be staying with her grandmother in Manila when she was in fact staying with family friends. Second, counsel questioned Ms. Lorega about a kick in the head she claimed to sustain, which she now claimed not to remember. Appendix F at 357:18-358:15. Third, counsel questioned Ms. Lorega regarding the number of times she had visited a doctor to confirm her health for immigration purposes, claiming that Ms. Lorega had gone twice, though she was adamant she had seen this doctor but once. Appendix F at 353:16-354:3.

Finally, counsel questioned Ms. Lorega regarding a love letter she had written in Tagalog. Appendix F at 359:4-361:8. Counsel elicited an admission from Ms. Lorega that the letter, written to her “husband,” was not written to Mr. McAllister. Appendix F at 361:1-8. Counsel did not question Ms. Lorega further regarding the letter. On re-direct, Ms. Lorega was allowed to explain the letter away as a fantasy she had written to simply keep herself busy. Appendix F at 366:6-16. Defense counsel then asked

Ms. Lorega why the letter was written in Tagalog when Ms. Lorega claimed her first language to be Waray-Waray, eliciting a statement that Ms. Lorega is fluent in Tagalog. Appendix F at 367:7-13. The defense did nothing with this information, including questioning Ms. Lorega as to her wildly inconsistent interview responses, despite the presence of Tagalog or Waray-Waray interpreters. Later, in rebuttal, Ms. Lorega denied having a boyfriend in the Philippines, and was not cross-examined on this statement either. Appendix F at 591:21-22.

The State next called Wendy White, a nurse who had conducted an examination of Ms. Lorega on June 18, 2010, nearly two months after she left Mr. McAllister. Appendix F at 370:20-22. Nurse White testified as to bruising on the opening of Ms. Lorega's vagina but, due to the pre-trial agreement entered into by both parties, did not testify as to the genital warts. Appendix F at 373:6-15. Ms. White claimed that the bruising was consistent with sexual abuse, a claim that was not included in her report of the incident. *Id.* On cross-exam, however, counsel elicited only an admission that the bruise could not be dated, and allowed Nurse White to repeat that there was no way in her experience that the bruising would be consistent with consensual sex. Appendix F at 375:25-376:2, 376:3-15. Nurse White was not impeached with her own medical report.

Later, in rebuttal, Ms. Lorega claimed there were no problems with Mr. McAllister's legs and that he could even jump – again, a claim easily disproven by medical records the defense possessed but declined to show to the jury, and a claim contradicted by an earlier interview in which Ms. Lorega acknowledged that Mr. McAllister limps. Appendix F at 6031:27; Appendix U at 61:25-62:1. Appendix W. Defense counsel did not impeach Ms. Lorega with this interview.

7. Failure to abide by client's wishes

At trial, Mr. McAllister described a loving relationship that had included four or five sexual encounters. Appendix F at 548:10-549:9. Mr. McAllister adamantly denied using force, testifying that he would never do such a thing. Appendix F at 549:16-18.

However, defense counsel forbade Mr. McAllister from telling the jury how sexually aggressive Ms. Lorega had been from her first night in the United States, initiating oral sex. Appendix G at paragraph 29.

Counsel also refused to allow Mr. McAllister testify from his calendar as to his medical appointment schedule, or use medical bills to establish the dates of Mr. McAllister's appointments. Appendix G at paragraph 29.

8. Failure to call rebuttal witness

The defense refused to call any of Mr. McAllister's friends in rebuttal to testify about his injuries and disabilities, all of which were fully catalogued in Mr. McAllister's medical records as well. Appendix G at paragraph 28. Other rebuttal witnesses could have testified as to the appearance of the embassy lobby or contact with Ms. Lorega. Counsel likewise did not recall any of the State's witnesses in rebuttal, even though Mr. Perkins could have impeached internal inconsistencies Ms. Lorega's testimony.

IV. Prosecutorial Misconduct

1. Brady Violations

The State failed to turn over to the defense a confirmation of Ms. Lorega's embassy appointment cautioning cell phones were not allowed inside the embassy. Appendix J, Exhibit 9. This would have established that Ms. Lorega was lying when she claimed she had taken her cell phone into the embassy.

Further, after trial, Mr. McAllister's brother, attorney Michael McAllister, uncovered numerous documents never provided by the State, including emails between Mr. Perkins and Detective Garrett, some that Mr. Perkins had purportedly translated and typed on Ms. Lorega's behalf, that

established the extent of Mr. Perkins' involvement in the prosecution, revealed that Mr. Perkins had pressed for the initial investigation, had chosen the investigating detective, and had determined just how Ms. Lorega would be able to stay in the country and began the process, asking the State for paperwork to assist in obtaining the proper visa. Exhibits 6 and 7 to Appendix J, Appendix K at 270. A declaration written for Ms. Lorega by her immigration attorney but presumably adopted by Ms. Lorega as her own, claimed she was angry and wanted nothing to do with men. She had been dating her new boyfriend for a year as of the date of the email. *Id.*

One of these statements was a three-page letter, of which the third page was never provided prior to trial. *Exhibit 3 to Appendix M.* Though this page was sent to Detective Garrett, it was allegedly never received by the prosecuting attorney's office. Appendix K at 285. This page only showed up in response to Michael McAllister's public records request. *Exhibit 3 to Appendix M.*

The State's expert witness, Nurse Jolene Culbertson claimed pictures were taken of the initial exam of Ms. Lorega, but no such photographs were ever produced to the defense. Appendix K at 276.

Further, in her June 18, 2010 examination of Ms. Lorega, Nurse Wendy White noted that Ms. Lorega had been seen earlier a doctor at Harrison Hospital, but been "unsatisfied" with her visit. Appendix K at 83.

The date of this examination is unknown but was assuredly closer in time to the alleged abuse and rapes. No record of this examination was ever provided to the defense. Appellate counsel has worked diligently to obtain any records that Harrison Hospital may still retain regarding the examination, but none were provided. Exhibits 3 and 4 to Appendix J.

Medical records from Ms. Lorega's immigration doctor were never provided to the defense, contrary to discovery requests and the State's duty of disclosure. Exhibits 3 and 4 to Appendix J. The records would have shown at least two visits to the immigration doctor, contrary to Ms. Lorega's assertion she had seen the doctor once, and documented Ms. Lorega's denial of abuse during that visit.

2. Eliciting False Testimony

The State possessed, and failed to turn over to the defense, as noted above, a letter from the United States Embassy in Manila to Ms. Lorega that cautioned that cell phones were not allowed inside the embassy. Yet the State allowed her to testify at length to the contrary. Exhibit 9 to Appendix J.

Further, the State was well aware prior to trial that Ms. Lorega told the detectives a new and different story every time she was interviewed. The State, along with its lead detective, Detective Garrett, was in possession

of several documents later uncovered that established that the State knew, or should have known, that Ms. Lorega was not being truthful in her testimony.

One of these, the CAD Report, was in the State's possession well in advance of trial, as the State provided this report to the defense prior to trial. Appendix bb. The State was therefore aware that only one 911 call, from Mr. Perkins, was placed on the day Ms. Lorega left Mr. McAllister's home. Appendix bb. This is directly contrary to Mrs. Perkins claim on cross-examination that both her husband and Ms. Lorega had called 911, and Ms. Lorega's insistence that she had placed the call. Appendix F at 221:6-7; 336:22-23.

3. Arguing Facts Not in Evidence

In closing arguments in this case, the State made Mr. McAllister out to be a predator, a typical abusive man who sought to control Ms. Lorega during the entirety of their relationship, including leaving her home during medical appointment as a further means of control. Appendix F at 644:26-645:10. The State also placed the jury in Ms. Lorega's shoes as a young woman new to a foreign country, and isolated in a remote location by the one man she knows. Appendix F at 647:11-18.

V. The aftermath

Unsurprisingly, Mr. McAllister was convicted. Appendix F at 705:20-716:9. A motion for a new trial was denied by the Court. Appendix F at 741:14-16. A direct appeal was filed, and Mr. McAllister's conviction affirmed as much of the evidence in support of his claims lay outside the record, necessitating the instant petition. Appendix D.

F. OATH

After being first, duly sworn, on oath, I depose and say: That I am the attorney for the petitioner Patrick McAllister, that I have prepared the petition, know its contents, and believe the petition is true.

Respectfully Submitted this 28th Day of July, 2016

John C. Cain
John C. Cain, WSBA #16164
Attorney for Mr. McAllister

SUBSCRIBED AND SWORN TO before me this 29th day of July, 2016.

Barbara A. L. Cain
NOTARY PUBLIC in and for the State of Washington res. at [illegible]
My commission expires 8-15-19

